

CHAPTER 39

CORPORATIONS AND ASSOCIATIONS

HOUSE BILL 20-1013

BY REPRESENTATIVE(S) Snyder, Bird, Exum, Kraft-Tharp, Woodrow;
also SENATOR(S) Lee, Gardner.

AN ACT**CONCERNING THE SPECIFICATION OF PROCEDURES FOR THE RATIFICATION OF DEFECTIVE CORPORATE ACTIONS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 7-103-106 as follows:

7-103-106. Ratification of defective corporate actions - definitions.

(1) Defective corporate actions. (a) A DEFECTIVE CORPORATE ACTION IS NOT VOID OR VOIDABLE IF RATIFIED IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION OR VALIDATED IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION.

(b) RATIFICATION UNDER SUBSECTION (2) OF THIS SECTION OR VALIDATION UNDER SUBSECTION (7) OF THIS SECTION IS NOT THE EXCLUSIVE MEANS OF RATIFYING OR VALIDATING ANY DEFECTIVE CORPORATE ACTION, AND THE ABSENCE OR FAILURE OF RATIFICATION OR VALIDATION IN ACCORDANCE WITH THIS SECTION DOES NOT, OF ITSELF, AFFECT THE VALIDITY OR EFFECTIVENESS OF ANY CORPORATE ACTION PROPERLY RATIFIED UNDER COMMON LAW OR OTHERWISE, NOR DOES IT CREATE A PRESUMPTION THAT ANY SUCH CORPORATE ACTION IS OR WAS A DEFECTIVE CORPORATE ACTION OR VOID OR VOIDABLE.

(c) IN THE CASE OF AN OVERISSUE, PUTATIVE SHARES ARE VALID SHARES EFFECTIVE AS OF THE DATE ORIGINALLY ISSUED OR PURPORTEDLY ISSUED UPON:

(I) THE EFFECTIVENESS UNDER THIS SECTION AND UNDER ARTICLE 110 OF THIS TITLE 7 OF AN AMENDMENT TO THE ARTICLES OF INCORPORATION AUTHORIZING, DESIGNATING, OR CREATING THE SHARES; OR

(II) THE EFFECTIVENESS OF ANY OTHER CORPORATE ACTION UNDER THIS SECTION

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

RATIFYING THE AUTHORIZATION, DESIGNATION, OR CREATION OF THE SHARES.

(2) Ratification of defective corporate actions. (a) To RATIFY A DEFECTIVE CORPORATE ACTION UNDER THIS SECTION OTHER THAN THE RATIFICATION OF AN ELECTION OF THE INITIAL BOARD OF DIRECTORS UNDER SUBSECTION (2)(b) OF THIS SECTION, THE BOARD OF DIRECTORS MUST TAKE ACTION RATIFYING THE ACTION IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION, STATING:

(I) THE DEFECTIVE CORPORATE ACTION TO BE RATIFIED AND, IF THE DEFECTIVE CORPORATE ACTION INVOLVED THE ISSUANCE OF PUTATIVE SHARES, THE NUMBER AND TYPE OF PUTATIVE SHARES PURPORTEDLY ISSUED;

(II) THE DATE OF THE DEFECTIVE CORPORATE ACTION;

(III) THE NATURE OF THE FAILURE OF AUTHORIZATION WITH RESPECT TO THE DEFECTIVE CORPORATE ACTION TO BE RATIFIED; AND

(IV) THAT THE BOARD OF DIRECTORS APPROVES THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION.

(b) IF A DEFECTIVE CORPORATE ACTION TO BE RATIFIED RELATES TO THE ELECTION OF THE INITIAL BOARD OF DIRECTORS UNDER SECTION 7-102-105 (1)(a), A MAJORITY OF THE PERSONS WHO, AT THE TIME OF THE RATIFICATION, ARE EXERCISING THE POWERS OF DIRECTORS MAY TAKE AN ACTION STATING:

(I) THE NAME OF THE PERSON OR PERSONS WHO FIRST TOOK ACTION IN THE NAME OF THE CORPORATION AS THE INITIAL BOARD OF DIRECTORS;

(II) THE EARLIER OF THE DATE ON WHICH THE PERSONS FIRST TOOK THE ACTION OR WERE PURPORTED TO HAVE BEEN ELECTED AS THE INITIAL BOARD OF DIRECTORS; AND

(III) THAT THE RATIFICATION OF THE ELECTION OF THE PERSON OR PERSONS AS THE INITIAL BOARD OF DIRECTORS IS APPROVED.

(c) IF ANY PROVISION OF ARTICLES 101 TO 117 OF THIS TITLE 7, THE ARTICLES OF INCORPORATION OR BYLAWS, OR A CORPORATE RESOLUTION OR ANY PLAN OR AGREEMENT TO WHICH THE CORPORATION IS A PARTY IN EFFECT AT THE TIME ACTION UNDER SUBSECTION (2)(a) OF THIS SECTION IS TAKEN REQUIRES SHAREHOLDER APPROVAL OR WOULD HAVE REQUIRED SHAREHOLDER APPROVAL AT THE DATE OF THE OCCURRENCE OF THE DEFECTIVE CORPORATE ACTION, THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION APPROVED IN THE ACTION TAKEN BY THE BOARD OF DIRECTORS UNDER SUBSECTION (2)(a) OF THIS SECTION MUST BE SUBMITTED TO THE SHAREHOLDERS FOR APPROVAL IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION.

(d) UNLESS OTHERWISE PROVIDED IN THE ACTION TAKEN BY THE BOARD OF DIRECTORS UNDER SUBSECTION (2)(a) OF THIS SECTION, AFTER THE ACTION BY THE BOARD OF DIRECTORS HAS BEEN TAKEN AND, IF REQUIRED, APPROVED BY THE SHAREHOLDERS, THE BOARD OF DIRECTORS MAY ABANDON THE RATIFICATION AT ANY TIME BEFORE THE VALIDATION EFFECTIVE TIME WITHOUT FURTHER ACTION OF

THE SHAREHOLDERS.

(3) Action on ratification. (a) THE QUORUM AND VOTING REQUIREMENTS APPLICABLE TO A RATIFYING ACTION BY THE BOARD OF DIRECTORS UNDER SUBSECTION (2) OF THIS SECTION ARE THE QUORUM AND VOTING REQUIREMENTS APPLICABLE TO THE CORPORATE ACTION PROPOSED TO BE RATIFIED AT THE TIME SUCH RATIFYING ACTION IS TAKEN.

(b) IF THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION REQUIRES APPROVAL BY THE SHAREHOLDERS UNDER SUBSECTION (2)(c) OF THIS SECTION AND IF THE APPROVAL IS TO BE GIVEN AT A MEETING, THE CORPORATION SHALL NOTIFY EACH HOLDER OF VALID AND PUTATIVE SHARES, REGARDLESS OF WHETHER ENTITLED TO VOTE, AS OF THE RECORD DATE FOR NOTICE OF THE MEETING. THE NOTICE MUST STATE THAT THE PURPOSE, OR ONE OF THE PURPOSES, OF THE MEETING IS TO CONSIDER RATIFICATION OF A DEFECTIVE CORPORATE ACTION AND MUST BE ACCOMPANIED BY:

(I) EITHER A COPY OF THE WRITTEN ACTION TAKEN BY THE BOARD OF DIRECTORS IN ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION OR THE INFORMATION REQUIRED BY SUBSECTIONS (2)(a)(I) TO (2)(a)(IV) OF THIS SECTION; AND

(II) A STATEMENT THAT ANY CLAIM THAT THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION AND ANY PUTATIVE SHARES ISSUED AS A RESULT OF THE DEFECTIVE CORPORATE ACTION SHOULD NOT BE EFFECTIVE, OR SHOULD BE EFFECTIVE ONLY ON CERTAIN CONDITIONS, MUST BE BROUGHT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE APPLICABLE VALIDATION EFFECTIVE TIME.

(c) EXCEPT AS PROVIDED IN SUBSECTION (3)(d) OF THIS SECTION WITH RESPECT TO THE VOTING REQUIREMENTS TO RATIFY THE ELECTION OF A DIRECTOR, THE QUORUM AND VOTING REQUIREMENTS APPLICABLE TO THE APPROVAL BY THE SHAREHOLDERS REQUIRED BY SUBSECTION (2)(c) OF THIS SECTION ARE THE QUORUM AND VOTING REQUIREMENTS APPLICABLE TO THE CORPORATE ACTION PROPOSED TO BE RATIFIED AT THE TIME OF THE SHAREHOLDER APPROVAL, NOT THE REQUIREMENTS FOR SHAREHOLDER APPROVAL EXISTING AT THE TIME THAT THE DEFECTIVE CORPORATE ACTION REQUIRING THE RATIFICATION WAS ORIGINALLY TAKEN.

(d) THE APPROVAL BY SHAREHOLDERS TO RATIFY THE ELECTION OF A DIRECTOR REQUIRES THAT THE VOTES CAST WITHIN THE VOTING GROUP FAVORING THE RATIFICATION EXCEED THE VOTES CAST OPPOSING THE RATIFICATION OF THE ELECTION AT A MEETING AT WHICH A QUORUM IS PRESENT.

(e) HOLDERS OF PUTATIVE SHARES ON THE RECORD DATE FOR DETERMINING THE SHAREHOLDERS ENTITLED TO VOTE ON ANY MATTER SUBMITTED TO SHAREHOLDERS UNDER SUBSECTION (2)(c) OF THIS SECTION, AND WITHOUT GIVING EFFECT TO ANY RATIFICATION OF PUTATIVE SHARES THAT BECOMES EFFECTIVE AS A RESULT OF SUCH VOTE, ARE NOT ENTITLED TO VOTE AND SHALL NOT BE COUNTED FOR QUORUM PURPOSES IN ANY VOTE TO APPROVE THE RATIFICATION OF ANY DEFECTIVE CORPORATE ACTION.

(f) IF THE APPROVAL UNDER THIS SECTION OF PUTATIVE SHARES WOULD RESULT IN AN OVERISSUE, IN ADDITION TO THE APPROVAL REQUIRED BY SUBSECTION (2) OF

THIS SECTION, APPROVAL OF AN AMENDMENT TO THE ARTICLES OF INCORPORATION UNDER ARTICLE 110 OF THIS TITLE 7 TO INCREASE THE NUMBER OF SHARES OF AN AUTHORIZED CLASS OR SERIES OR TO AUTHORIZE THE CREATION OF A CLASS OR SERIES OF SHARES AS NECESSARY TO PRECLUDE AN OVERISSUE IS ALSO REQUIRED.

(4) Notice requirements. (a) UNLESS SHAREHOLDER APPROVAL IS REQUIRED UNDER SUBSECTION (2)(c) OF THIS SECTION, PROMPT NOTICE OF AN ACTION TAKEN UNDER SUBSECTION (2) OF THIS SECTION SHALL BE GIVEN TO EACH HOLDER OF VALID AND PUTATIVE SHARES, REGARDLESS OF WHETHER ENTITLED TO VOTE, AS OF:

(I) THE DATE OF THE ACTION BY THE BOARD OF DIRECTORS; AND

(II) THE DATE OF THE DEFECTIVE CORPORATE ACTION RATIFIED; EXCEPT THAT NOTICE IS NOT REQUIRED TO BE GIVEN TO HOLDERS OF VALID AND PUTATIVE SHARES WHOSE IDENTITIES OR ADDRESSES FOR NOTICE CANNOT BE DETERMINED FROM THE RECORDS OF THE CORPORATION.

(b) THE NOTICE MUST CONTAIN:

(I) EITHER A COPY OF THE WRITTEN ACTION TAKEN BY THE BOARD OF DIRECTORS IN ACCORDANCE WITH SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION OR THE INFORMATION REQUIRED BY SUBSECTIONS (2)(a)(I) TO (2)(a)(IV) OR (2)(b)(I) TO (2)(b)(III) OF THIS SECTION, AS APPLICABLE; AND

(II) A STATEMENT THAT ANY CLAIM THAT THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION AND ANY PUTATIVE SHARES ISSUED AS A RESULT OF THE DEFECTIVE CORPORATE ACTION SHOULD NOT BE EFFECTIVE, OR SHOULD BE EFFECTIVE ONLY ON CERTAIN CONDITIONS, MUST BE BROUGHT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE APPLICABLE VALIDATION EFFECTIVE TIME.

(c) NOTICE UNDER THIS SECTION IS NOT REQUIRED WITH RESPECT TO ANY ACTION REQUIRED TO BE SUBMITTED TO SHAREHOLDERS FOR APPROVAL UNDER SUBSECTION (2)(c) OF THIS SECTION IF NOTICE IS GIVEN IN ACCORDANCE WITH SUBSECTION (4)(b) OF THIS SECTION.

(d) A NOTICE REQUIRED BY THIS SECTION MAY BE GIVEN IN ANY MANNER PERMITTED BY SECTION 7-101-402 AND, FOR ANY CORPORATION SUBJECT TO THE REPORTING REQUIREMENTS OF SECTION 13 OR 15 (d) OF THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", AS AMENDED, 15 U.S.C. SEC. 78m AND 15 U.S.C. SEC. 78m (d), MAY BE GIVEN BY MEANS OF A FILING OR FURNISHING OF THE NOTICE WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION.

(e) THE FAILURE TO GIVE THE NOTICE DOES NOT INVALIDATE THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION.

(5) Effect of ratification. FROM AND AFTER THE VALIDATION EFFECTIVE TIME, AND WITHOUT REGARD TO THE ONE-HUNDRED-TWENTY-DAY PERIOD DURING WHICH A CLAIM MAY BE BROUGHT UNDER SUBSECTION (7) OF THIS SECTION:

(a) EACH DEFECTIVE CORPORATE ACTION RATIFIED IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION IS NOT VOID OR VOIDABLE AS A RESULT OF THE

FAILURE OF AUTHORIZATION IDENTIFIED IN THE ACTION TAKEN UNDER SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION AND SHALL BE DEEMED A VALID CORPORATE ACTION EFFECTIVE AS OF THE DATE OF THE DEFECTIVE CORPORATE ACTION;

(b) THE ISSUANCE OF EACH PUTATIVE SHARE OR FRACTION OF A PUTATIVE SHARE PURPORTEDLY ISSUED PURSUANT TO A DEFECTIVE CORPORATE ACTION IDENTIFIED IN THE ACTION TAKEN UNDER SUBSECTION (2) OF THIS SECTION IS NOT VOID OR VOIDABLE, AND EACH SUCH PUTATIVE SHARE OR FRACTION OF A PUTATIVE SHARE SHALL BE DEEMED TO BE AN IDENTICAL SHARE OR FRACTION OF A VALID SHARE AS OF THE TIME IT WAS PURPORTEDLY ISSUED; AND

(c) ANY CORPORATE ACTION TAKEN AFTER THE DEFECTIVE CORPORATE ACTION RATIFIED IN ACCORDANCE WITH THIS SECTION IN RELIANCE ON THE DEFECTIVE CORPORATE ACTION HAVING BEEN VALIDLY EFFECTED AND ANY SUBSEQUENT DEFECTIVE CORPORATE ACTION RESULTING DIRECTLY OR INDIRECTLY FROM THE ORIGINAL DEFECTIVE CORPORATE ACTION IS VALID AS OF THE TIME TAKEN.

(6) **Filings.** (a) IF THE DEFECTIVE CORPORATE ACTION RATIFIED UNDER THIS SECTION WOULD HAVE REQUIRED UNDER ANY OTHER SECTION OF ARTICLES 101 TO 117 OF THIS TITLE 7 A FILING IN ACCORDANCE WITH ARTICLES 101 TO 117 OF THIS TITLE 7, THEN, REGARDLESS OF WHETHER A FILING WAS PREVIOUSLY MADE WITH RESPECT TO THE DEFECTIVE CORPORATE ACTION AND IN LIEU OF A FILING OTHERWISE REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE 7, THE CORPORATION SHALL FILE ARTICLES OF AMENDMENT IN ACCORDANCE WITH THIS SECTION, AND THE ARTICLES OF AMENDMENT AMEND OR SUBSTITUTE FOR ANY OTHER FILING WITH RESPECT TO THE DEFECTIVE CORPORATE ACTION REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE 7.

(b) THE ARTICLES OF AMENDMENT MUST SET FORTH IN AN ATTACHMENT TO THE ARTICLES:

(I) THE DEFECTIVE CORPORATE ACTION THAT IS THE SUBJECT OF THE ARTICLES OF AMENDMENT INCLUDING, IN THE CASE OF ANY DEFECTIVE CORPORATE ACTION INVOLVING THE ISSUANCE OF PUTATIVE SHARES, THE NUMBER AND TYPE OF PUTATIVE SHARES ISSUED AND THE DATE OR DATES UPON WHICH THE PUTATIVE SHARES WERE PURPORTED TO HAVE BEEN ISSUED;

(II) THE DATE OF THE DEFECTIVE CORPORATE ACTION;

(III) THE NATURE OF THE FAILURE OF AUTHORIZATION WITH RESPECT TO THE DEFECTIVE CORPORATE ACTION;

(IV) A STATEMENT THAT THE DEFECTIVE CORPORATE ACTION WAS RATIFIED IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION, INCLUDING THE DATE ON WHICH THE BOARD OF DIRECTORS RATIFIED THE DEFECTIVE CORPORATE ACTION AND THE DATE, IF ANY, ON WHICH THE SHAREHOLDERS APPROVED THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION; AND

(V) THE INFORMATION REQUIRED BY SUBSECTION (6)(c) OF THIS SECTION.

(c) THE ARTICLES OF AMENDMENT MUST ALSO CONTAIN THE FOLLOWING

INFORMATION IN AN ATTACHMENT TO THE ARTICLES:

(I) IF A FILING WAS PREVIOUSLY MADE WITH RESPECT TO THE DEFECTIVE CORPORATE ACTION AND NO CHANGES TO THE FILING ARE REQUIRED TO GIVE EFFECT TO THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION, THE ARTICLES OF AMENDMENT MUST SET FORTH:

(A) THE NAME, TITLE, AND FILING DATE OF THE FILING PREVIOUSLY MADE AND ANY ARTICLES OF CORRECTION TO THAT FILING; AND

(B) A STATEMENT THAT A COPY OF THE FILING PREVIOUSLY MADE, TOGETHER WITH ANY ARTICLES OF CORRECTION TO THAT FILING, IS ATTACHED AS AN EXHIBIT TO THE ARTICLES OF AMENDMENT;

(II) IF A FILING WAS PREVIOUSLY MADE WITH RESPECT TO THE DEFECTIVE CORPORATE ACTION AND THE FILING REQUIRES ANY CHANGE TO GIVE EFFECT TO THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION IN ACCORDANCE WITH THIS SUBSECTION (6)(c), THE ARTICLES OF AMENDMENT MUST SET FORTH:

(A) THE NAME, TITLE, DOCUMENT NUMBER, AND FILING DATE OF THE FILING PREVIOUSLY MADE AND ANY ARTICLES OF CORRECTION TO THAT FILING;

(B) A STATEMENT THAT A FILING CONTAINING ALL OF THE INFORMATION REQUIRED TO BE INCLUDED UNDER THE APPLICABLE SECTION OR SECTIONS OF ARTICLES 101 TO 117 OF THIS TITLE 7 TO GIVE EFFECT TO THE DEFECTIVE CORPORATE ACTION IS ATTACHED AS AN EXHIBIT TO THE ARTICLES OF AMENDMENT; AND

(C) THE DATE AND TIME THAT THE FILING IS DEEMED TO HAVE BECOME EFFECTIVE; OR

(III) IF A FILING WAS NOT PREVIOUSLY MADE WITH RESPECT TO THE DEFECTIVE CORPORATE ACTION AND THE DEFECTIVE CORPORATE ACTION RATIFIED UNDER SUBSECTION (2) OF THIS SECTION WOULD HAVE REQUIRED A FILING UNDER ANY OTHER SECTION OF ARTICLES 101 TO 117 OF THIS TITLE 7, THE ARTICLES OF AMENDMENT MUST SET FORTH:

(A) A STATEMENT THAT A FILING CONTAINING ALL OF THE INFORMATION REQUIRED TO BE INCLUDED UNDER THE APPLICABLE SECTION OR SECTIONS OF ARTICLES 101 TO 117 OF THIS TITLE 7 TO GIVE EFFECT TO THE DEFECTIVE CORPORATE ACTION IS ATTACHED AS AN EXHIBIT TO THE ARTICLES OF AMENDMENT; AND

(B) THE DATE AND TIME THAT THE FILING IS DEEMED TO HAVE BECOME EFFECTIVE.

(7) Judicial proceedings regarding validity of corporate actions. (a) UPON APPLICATION BY THE CORPORATION, ANY SUCCESSOR ENTITY TO THE CORPORATION, A DIRECTOR OF THE CORPORATION, ANY BENEFICIAL OWNER OF THE CORPORATION, INCLUDING ANY SUCH BENEFICIAL OWNER AS OF THE DATE OF THE DEFECTIVE CORPORATE ACTION RATIFIED UNDER SUBSECTION (2) OF THIS SECTION, OR ANY OTHER PERSON CLAIMING TO BE SUBSTANTIALLY AND ADVERSELY AFFECTED BY A RATIFICATION UNDER SUBSECTION (2) OF THIS SECTION, THE COURT AUTHORIZED TO

ACT UNDER SECTION 7-107-103 MAY:

(I) DETERMINE THE VALIDITY AND EFFECTIVENESS OF ANY CORPORATE ACTION OR DEFECTIVE CORPORATE ACTION;

(II) DETERMINE THE VALIDITY AND EFFECTIVENESS OF ANY RATIFICATION UNDER SUBSECTION (2) OF THIS SECTION;

(III) DETERMINE THE VALIDITY OF ANY PUTATIVE SHARES; AND

(IV) MODIFY OR WAIVE ANY OF THE PROCEDURES SPECIFIED IN SUBSECTION (2) OR (3) OF THIS SECTION TO RATIFY A DEFECTIVE CORPORATE ACTION.

(b) IN CONNECTION WITH AN ACTION UNDER THIS SECTION, THE COURT MAY MAKE SUCH FINDINGS OR ORDERS, AND TAKE INTO ACCOUNT ANY FACTORS OR CONSIDERATIONS, REGARDING SUCH MATTERS AS IT DEEMS PROPER UNDER THE CIRCUMSTANCES.

(c) SERVICE OF PROCESS OF THE APPLICATION UNDER SUBSECTION (7)(a) OF THIS SECTION ON THE CORPORATION MAY BE MADE IN ANY MANNER PROVIDED BY STATUTE OF THIS STATE OR BY RULE OF THE APPLICABLE COURT FOR SERVICE ON THE CORPORATION, AND NO OTHER PARTY NEED BE JOINED IN ORDER FOR THE COURT TO ADJUDICATE THE MATTER. IN AN ACTION FILED BY THE CORPORATION, THE COURT MAY REQUIRE NOTICE OF THE ACTION BE PROVIDED TO OTHER PERSONS SPECIFIED BY THE COURT AND PERMIT SUCH OTHER PERSONS TO INTERVENE IN THE ACTION.

(d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR OTHERWISE UNDER APPLICABLE LAW, ANY ACTION ASSERTING THAT THE RATIFICATION OF A DEFECTIVE CORPORATE ACTION AND ANY PUTATIVE SHARES ISSUED AS A RESULT OF THE DEFECTIVE CORPORATE ACTION SHOULD NOT BE EFFECTIVE, OR SHOULD BE EFFECTIVE ONLY ON CERTAIN CONDITIONS, MUST BE BROUGHT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE VALIDATION EFFECTIVE TIME.

(8) **Definitions.** AS USED IN THIS SECTION:

(a) "CORPORATE ACTION" MEANS ANY ACTION TAKEN BY OR ON BEHALF OF THE CORPORATION, INCLUDING ANY ACTION TAKEN BY THE INCORPORATOR, THE BOARD OF DIRECTORS, A COMMITTEE OF THE BOARD OF DIRECTORS, AN OFFICER OR AGENT OF THE CORPORATION, OR THE SHAREHOLDERS.

(b) "DATE OF THE DEFECTIVE CORPORATE ACTION" MEANS THE DATE, OR THE APPROXIMATE DATE IF THE EXACT DATE IS UNKNOWN, ON WHICH THE DEFECTIVE CORPORATE ACTION WAS PURPORTED TO HAVE BEEN TAKEN.

(c) "DEFECTIVE CORPORATE ACTION" MEANS:

(I) ANY CORPORATE ACTION PURPORTEDLY TAKEN THAT IS, AND AT THE TIME THE CORPORATE ACTION WAS PURPORTEDLY TAKEN WOULD HAVE BEEN, WITHIN THE POWER OF THE CORPORATION, WITHOUT REGARD TO THE FAILURE OF AUTHORIZATION IDENTIFIED IN SUBSECTION (2)(a) OF THIS SECTION, BUT IS VOID OR VOIDABLE DUE TO A FAILURE OF AUTHORIZATION; AND

(II) AN OVERISSUE.

(d) "FAILURE OF AUTHORIZATION" MEANS THE FAILURE TO AUTHORIZE, APPROVE, OR OTHERWISE EFFECT A CORPORATE ACTION IN COMPLIANCE WITH ANY OF THE FOLLOWING, IF AND TO THE EXTENT THE FAILURE WOULD RENDER THE CORPORATE ACTION VOID OR VOIDABLE:

(I) ARTICLES 101 TO 117 OF THIS TITLE 7;

(II) THE ARTICLES OF INCORPORATION OR BYLAWS;

(III) A CORPORATE RESOLUTION OR ANY PLAN OR AGREEMENT TO WHICH THE CORPORATION IS A PARTY; OR

(IV) THE DISCLOSURE SET FORTH IN ANY PROXY OR CONSENT SOLICITATION STATEMENT.

(e) "OVERISSUE" MEANS THE PURPORTED ISSUANCE OF:

(I) SHARES OF A CLASS OR SERIES IN EXCESS OF THE NUMBER OF SHARES OF A CLASS OR SERIES THE CORPORATION HAS THE POWER TO ISSUE UNDER SECTION 7-106-101 AT THE TIME OF THE ISSUANCE; OR

(II) SHARES OF ANY CLASS OR SERIES THAT ARE NOT THEN AUTHORIZED FOR ISSUANCE BY THE ARTICLES OF INCORPORATION.

(f) "PUTATIVE SHARES" MEANS THE SHARES OF ANY CLASS OR SERIES, INCLUDING SHARES ISSUED UPON THE EXERCISE OF RIGHTS, OPTIONS, WARRANTS, OR OTHER SECURITIES CONVERTIBLE INTO SHARES OF THE CORPORATION, OR INTERESTS WITH RESPECT TO THE SHARES, THAT WERE CREATED OR ISSUED AS A RESULT OF A DEFECTIVE CORPORATE ACTION, THAT:

(I) BUT FOR ANY FAILURE OF AUTHORIZATION, WOULD CONSTITUTE VALID SHARES; OR

(II) CANNOT BE DETERMINED BY THE BOARD OF DIRECTORS TO BE VALID SHARES.

(g) (I) "VALIDATION EFFECTIVE TIME", WITH RESPECT TO ANY DEFECTIVE CORPORATE ACTION RATIFIED UNDER THIS SECTION, MEANS THE LATER OF:

(A) THE TIME AT WHICH THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION IS APPROVED BY THE SHAREHOLDERS OR, IF APPROVAL OF SHAREHOLDERS IS NOT REQUIRED, THE TIME AT WHICH THE NOTICE REQUIRED BY SUBSECTION (4) OF THIS SECTION TAKES EFFECT IN ACCORDANCE WITH SECTION 7-101-402; AND

(B) THE TIME AT WHICH ANY ARTICLES OF AMENDMENT FILED IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION BECOME EFFECTIVE.

(II) THE VALIDATION EFFECTIVE TIME IS NOT AFFECTED BY THE FILING OR PENDENCY OF A JUDICIAL PROCEEDING UNDER SUBSECTION (7) OF THIS SECTION OR OTHERWISE, UNLESS OTHERWISE ORDERED BY THE COURT.

(h) "VALID SHARES" MEANS THE SHARES OF ANY CLASS OR SERIES THAT HAVE BEEN DULY AUTHORIZED AND VALIDLY ISSUED IN ACCORDANCE WITH ARTICLES 101 TO 117 OF THIS TITLE 7, INCLUDING AS A RESULT OF RATIFICATION OR VALIDATION UNDER THIS SECTION.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: March 20, 2020